

United States  
Court of Appeals  
for the Ninth Circuit.

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SAMUEL NELSON, Individually, and as an Heir,  
Devisee and Legatee of Olof Zetterlund, De-  
ceased, Suing on His Own Behalf and on  
Behalf of All Other Heirs, Devisees and Lega-  
tees of Olof Zetterlund, Deceased, Similarly  
Situated,

Appellant,

VS.

DORA MILLER and HAROLD M. DAVIDSON,  
Both Individually and as Pretending Co-  
Executors, or Co-Executors De Son Tort, of the  
Estate of Olof Zetterlund,

Appellees.

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Supplemental  
Transcript of Record

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Appeal from the United States District Court  
Southern District of California,  
Central Division.



United States  
Court of Appeals  
for the Ninth Circuit.

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SAMUEL NELSON, Individually, and as an Heir,  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States in and  
for the Southern District of California, Central  
Division

Civil No. 7545-B

DORA MILLER and HAROLD M. DAVIDSON,  
as Co-executors of the Estate of Olof Zetter-  
lund, Deceased,

Cross-Complainants,

vs.

SAMUEL NELSON, Individually, and as an Heir,  
Devisee and Legatee of Olof Zetterlund, De-  
ceased, and as Pretending Executor, or Ex-  
ecutor de son tort of the Estate of Olof Zetter-  
lund, Deceased,

Cross-Defendant.

## CROSS-COMPLAINT FOR DECLARATORY RELIEF

The Cross-complainants bring this cross-complaint as Co-executors of the Estate of Olof Zetterlund, deceased, by and through their Attorney, William J. Clark, 317 West Main Street, Alhambra, California, and bring this action against Samuel Nelson, individually, and as the pretending executor of the Estate of Olof Zetterlund, deceased. Cross-complainants are adults and are residents and citizens of the County of Los Angeles, State of California. The Cross-defendant is an adult and a resident of Essex County, State of New Jersey.

The matter in controversy is of a civil nature

and [194\*] exceeds, exclusive of interest and costs, the sum of \$3,000.00.

Cross-complainants complaint and allege:

I.

That Olof Zetterlund died on the 21st day of August, 1945, and that at the time of his death, and for a long time prior thereto, was a resident of the County of Los Angeles, State of California, and was domiciled in the County of Los Angeles, State of California.

II.

That on August 31, 1945 Cross-complainants filed a petition to probate the Codicil of the Will of Olof Zetterlund in the Superior Court of the State of California, in and for the County of Los Angeles. That thereafter, on September 7, 1945, by order of the Superior Court in said proceeding, Harold M. Davidson was appointed Special Administrator of the Estate of Olof Zetterlund, deceased, and was ordered by said Court to proceed to Dade County, Florida, and to perform such acts necessary to carry on the business of Olof Zetterlund, deceased, and to take possession of all real and personal property belonging to said estate and to preserve it from damage, waste and injury. That on September 7, 1945 Special Letters of Administration were issued to Harold M. Davidson.

That on September 28, 1945 the said Superior Court made its order admitting the Codicil to the

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**\*Page numbering appearing at foot of page of original Certified Transcript of Record.**



Last Will and Testament of Olof Zetterlund, deceased, and appointed Dora Miller and Harold M. Davidson as co-executors of said estate. That on September 28, 1945 Letters Testamentary were issued by said Court to these Cross-complainants.

That on November 15, 1945, the said Superior Court issued [195] a supplemental order admitting to probate the Last Will and Testament of Olof Zetterlund, deceased, together with said Codicil, and that an exemplified copy of all of said orders and petitions, as here above set forth, are attached hereto and marked Exhibit "A" and made a part of this cross-complaint as if set forth herein in full.

### III.

That cross-complainants filed a petition for probate of codicil to the will of Olof Zetterlund, in Dade County, Florida, and a petition for ancillary proceeding and submitted exemplified copies of the probate of the codicil and the will of Olof Zetterlund as admitted to probate in the Superior Court of the State of California in and for the County of Los Angeles. That said codicil was duly signed by the testator and witnessed by two witnesses in accordance with the California law. That the Dade County Florida Court denied the petition to admit the codicil to probate and denied the petition for ancillary proceedings in Florida.

### IV.

That cross-defendant claims that he is the executor of the estate of Olof Zetterlund, deceased, and

that Olof Zetterlund was a resident of Dade County, Florida, and that the County Judge's Court in and for Dade County, Florida, had exclusive jurisdiction over the administration of the estate of said decedent.

## V.

That a controversy has arisen between cross-complainants and cross-defendant in that each claim to have exclusive jurisdiction over the tangible and intangible property of said Olof Zetterlund, deceased, and each claims a difference in the residence of Olof Zetterlund at the time of his death, and cross-complainants contend that the Superior Court of the State of California, in and for the County of Los Angeles, has exclusive jurisdiction over said estate, and cross-defendant contends that the County Judge's Court in and for Dade County, Florida, has exclusive jurisdiction and [196] that said controversy cannot be settled and determined except by adjudication by this Court.

Wherefore, cross-complainants pray that this Court adjudge and decree that Olof Zetterlund was a resident of Los Angeles County, State of California, at the time of his death and was domiciled in the State of California at the time of his death, and that the Superior Court of the State of California, in and for the County of Los Angeles, has full, complete and exclusive jurisdiction over all of the tangible and intangible assets of the estate of Olof Zetterlund, deceased, and that cross-complainants are the true and lawful co-executors of the Last Will and Testament and Codicil of Olof Zetterlund, deceased, and

for such other and further orders and decrees that may be necessary to adjudicate and declare the respective rights of the parties.

WILLIAM J. CLARK,

/s/ WILLIAM J. CLARK,  
Attorney for Cross-  
Complainants. [197]

State of California,  
County of Los Angeles—ss.

Dora Miller and Harold M. Davidson, each being by me first duly sworn, depose and say:

That they are the Cross-complainants in the above-entitled action; that they have each read the foregoing Cross-Complaint and know the contents thereof; and that the same is true of their own knowledge, except as to the matters which are therein stated upon their information or belief, and as to those matters that they believe the same to be true.

/s/ DORA MILLER,

/s/ HAROLD M. DAVIDSON.

Subscribed and sworn to before me this 30th day of September, 1947.

[Seal] /s/ INEZ DEEMS,  
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires: February 1, 1949. [198]

## EXHIBIT A

## Notice!

Please Attach Copy of Will to the Petition

Date of Hearing: September 28, 9:30 a. m.

Harold M. Davidson, Attorney for Petitioner;

219 Professional Building,

317 West Main Street,

Alhambra, California,

ATlantic 2-6138—CUMberland 3-1511.

In the Superior Court of the State of California in  
and for the County of Los Angeles

Case No. 246,797

In the Matter of the Estate of  
OLOF ZETTERLUND,

Deceased.

PETITION FOR PROBATE  
CODICIL TO WILL

To the Superior Court of the County of Los Angeles,  
State of California:

The petition of Dora Miller and Harold M. Davidson of the County of Los Angeles, State of California, respectfully states:

1. That Olof Zetterlund died on or about the 21st day of August, 1945, at San Gabriel, California.

2. That said deceased at the time of his death was a resident of the County of Los Angeles, State of California, and left property in the County of Los Angeles, State of California.

3. That the character and estimated value of the property of said estate, and the probable annual income therefrom, so far as known to your petitioner, are as follows:

Bank accounts, stock in a Florida corporation, and mortgages, \$850,000.00.

Annual income estimated at \$22,700.00. [199]

4. That said deceased left a Will bearing date the 9th day of June, 1937, and a codicil to said Will dated August 3, 1945, which your petitioners allege to be the last Will of said deceased, and which is presented herewith; that a copy of said will is annexed to this petition, marked exhibit "A."

5. That Dora Miller and Harold M. Davidson named in said Will as co-executors thereof, consent to act as such co-executors.

6. That the names, ages and residences of the devisees and legatees named in the said Will of deceased are as follows:

See Attached Schedule.

7. That the names, ages and residences of the heirs at law of said deceased, so far as known to your petitioner, are as follows:

See Attached Schedule. [200]

8. That at the time said Will was executed, to wit, on the said 9th day of June, 1937, the testator was over the age of eighteen years, to wit, of the age of...years, or thereabouts, and was of sound and disposing mind, and not acting under duress,



menace, fraud, or undue influence, and was in every respect, competent, by last Will, to dispose of all his estate.

9. \*That said Will is in writing signed by the said testator and attested by two subscribing witnesses. Your petitioners allege that said testator acknowledged the Will in the presence of said witnesses, present at the same time, and that said witnesses signed the said Will at the request of said testator and in the presence of said testator, and your petitioners further allege that said witnesses, at the time of attesting the execution of said Will, were competent.

(\*If an holograph will, so state and strike out paragraph 9.)

Wherefore, your petitioners pray that the said Will may be admitted to probate, and that Letters (Insert: "Testamentary," if for executor named in will, otherwise "of Administration with-the-will-annexed.") Testamentary be issued to your petitioners, and that for that purpose a time be appointed for proving said Will and that due notice thereof be given according to law, and that all necessary and proper orders may be made in the premises.

Dated August 24, 1945.

/s/ DORA MILLER,

/s/ HAROLD M. DAVIDSON. [209]

6. That the names, ages and residences of the devisees and legatees named in the said Will of deceased are as follows:

Karen Zetterlund, sister, 1454 Berwyn Avenue, Chicago, Illinois.

Carl Zetterlund, brother, deceased.

Gustaf Zetterlund, brother, deceased.

Augusta Zetterlund, niece, Arvika, Sweden.

Theodore Zetterlund, nephew, Milwaukee, Wis.

Dora Miller, stranger, 525 N. Del Mar Avenue, San Gabriel, Calif.

Mrs. Ellen Burdet, stranger, 528 Collins Avenue, Miami Beach, Fla.

Britta Zetterlund, sister, deceased.

Johannes Zetterlund, brother, deceased.

Hulda Zetterlund, niece, Kollstad, Sweden.

Gunard Zetterlund, nephew, Arvika, Sweden.

Inga Zetterlund, niece, Arvika, Sweden.

Albert Zetterlund, nephew.

Hulda.

David Zetterlund, nephew.

Signe.

Gustaf Zetterlund, nephew.

Carl Zetterlund, nephew.

Ruth.

Naime.

Hanna.

Sara.

Gustaf Zetterlund, nephew.

Enfrid Zetterlund, nephew.

Samuel.

Paul.

Hanna.

Ester.

Lydia.

Constance. [201]

Hulda.

Maria.

Paul Zetterlund, nephew.

John Zetterlund, nephew.

7. That the names, ages and residences of the heirs at law of said deceased, so far as known to your practitioners, are as follows:

Karen Zetterlund, sister, 1454 Berwyn Avenue, Chicago, Illinois.

Augusta Zetterlund, niece, Arvika, Sweden.

Theodore Zetterlund, nephew, Milwaukee Wis.

Hulda Zetterlund, niece, Kollstad, Sweden.

Gunard Zetterlund, nephew, Arvika, Sweden.

Inga Zetterlund, niece, Arvika, Sweden.

Albert Zetterlund, nephew.

Hulda.

David Zetterlund, nephew.

Signe.

Gustaf Zetterlund, nephew.

Carl Zetterlund, nephew.

Ruth.

Naime.

Hanna.

Sara.



Gustaf Zetterlund, nephew.

Enfrid Zetterlund, nephew.

Samuel.

Paul.

Hanna.

Ester.

Lydia.

Constance.

Hulda.

Maria.

Paul Zetterlund, nephew.

John Zetterlund, nephew. [202]

I, Olof Zetterlund, a citizen of Dade County, Florida, being of sound mind and memory, do hereby make, publish, and declare this my Last will and testament, hereby revoking and annulling all former wills by me made, in manner following, that is to say:

First: I desire that my executors hereinafter named, shall pay out of my estate all my just debts and funeral expenses without delay after my decease.

Second: I give and bequeath to my brother Carl, brother Gustaf, and sister Karin of Chicago, all my household goods, jewelry, library, personal clothing, and automobile, etc., to use, distribute or sell, according to their pleasure.

Third: I give and bequeath to each of my brother Carl, brother Gustaf, and sister Karin, Two Thousand Dollars (\$2,000.00) to each of them.

Fourth: I give and bequeath to my faithful

housekeeper, Miss Dora Miller, Nine Thousand Dollars (\$9,000.00).

Fifth: I give and bequeath to Mrs. Ellen Burdet, cashier in my hotel, for faithful service, Nine Thousand Dollars (\$9,000.00).

Sixth: I give and bequeath to my niece, Augusta Zetterlund, of Arvika, Sweden, Five Hundred Dollars (\$500.00).

Seventh: I give and bequeath to Theodore Zetterlund of Milwaukee, United States, Five Hundred Dollars (\$500.00).

Eighth: I give and bequeath to my sister, Britta, Arvika, Sweden, One Thousand Dollars (\$1,000.00).

Ninth: I give and bequeath to my brother Johannes, Amotfors, Sweden, One Thousand Dollars (\$1,000.00).

Tenth: I give and bequeath to my niece, Hulda Zetterlund, Kollstad, Sweden, Five Hundred Dollars (\$500.00). [203]

Eleventh: I give and bequeath to my nephew Gunard Zetterlund, Arvika, Sweden, One Thousand Dollars (\$1,000.00).

Twelfth: I give and bequeath to my niece Inga Zetterlund, Arvika, Sweden, One Thousand Dollars (\$1,000.00).

Thirteenth: All the rest of my estate, such as real estate, residence, and remainder of my personal estate, goods and chattels of whatever nature or kind it may be, and after monies realized from the same, except what is already disposed of and described above under this will, shall be divided into

twenty-seven (27) parts and I give and bequeath one part of the twenty-seven (27) parts to each of my relatives described as follows:

Fourteenth: I give and bequeath to my sister Britta and brother Johannes one part of the twenty-seven (27) parts to each of them. In the event of that anyone of them shall die before I am deceased their children shall inherit their share.

Fifteenth: I give and bequeath to my brother Carl, brother Gustaf, and sister Karin one part of the twenty-seven (27) parts to each of them.

Sixteenth: I give and bequeath to my brother Johannes' children, namely, Albert, David, Hulda, Signe, Gustaf and Carl one part of the twenty-seven (27) parts to each of them.

Seventeenth: I give and bequeath to my sister Britta's children, namely, Ruth, Naime, Hanna, Sara, Gustaf and Enfrid one part of the twenty-seven (27) parts to each of them.

Eighteenth: I give and bequeath to my sister Kajsa's children (Kajsa is now deceased) namely, Samuel, Paul, Hanna, Ester, Lydia and Constance one part of the twenty-seven (27) parts to each of them.

Nineteenth: I give and bequeath to my brother Eric's Children (Eric is now deceased) namely, Hulda, Maria, Paul and John, one part of the twenty-seven (27) parts to each of them.

Twentieth: At the present my estate consists principally [204] of land and improved real estate and a hotel, and it is my desire that the executors of my last Will and Testament shall not sacrifice too

much of its value in order to convert the same into money.

Twenty-First: Lastly: I hereby nominate, constitute and appoint my nephew Samuel Nelson of Maplewood, New Jersey; and Arvid Ericson of Toledo, Ohio, the executors of this, my last will and testament, hereby revoking all former wills by me made.

Twenty-Second: I know that there will be a great deal of work in connection with a proper execution of this will; I therefore give and bequeath to Samuel Nelson and Arvid Ericson One Thousand Dollars (\$1,000.00), to each of them as compensation for their work and good judgment in connection herewith.

Twenty-Third: If any one of my heirs resorts to the Courts to break the provision of this will, the bequests to such heirs will be revoked by said act, and the said heir's portion will go into my estate to be divided among the other legatees.

Twenty-Fourth: If any one of my heirs, except sister Britta, sister Karin, brother Johannes, brother Carl and brother Gustaf, who have been bequeathed one part of the twenty-seven (27) parts, as described in this my last will, should die before I am deceased, his or her part of the twenty-seven (27) parts will go to the general fund and be inherited, pro rata, by all the remaining heirs.

In Witness Whereof I have herein set my hand and seal this 9th day of June in the year of 1937.

OLOF ZETTERLUND.

The above instrument was, at the date thereof, signed, sealed, published and declared, by the said Olof Zetterlund, as and for his last will and testament in presence of us, who, at his request, and in his presence, and in the presence of each others, have subscribed our names as witness thereof.

E. L. LOCKHART,

P. A. WILLIAMS. [205]

Codicil to Last Will and Testament of  
Olof Zetterlund

I, Olof Zetterlund, a citizen of the City of San Gabriel County of Los Angeles, State of California, being of sound mind and memory, do hereby declare this to be a Codicil to my last will and testament, made and executed by me on the 9th day of June, 1937, in the following manner:

First: I hereby reaffirm and reallege each and every allegation and paragraph in my former Will, except Paragraph 21 and Paragraph 22 thereof. Inasmuch as I am now a resident of the County of Los Angeles, State of California, I wish to nominate and appoint local co-executors. I hereby delete Paragraph 21 from my former Will, and in place thereof make a new Paragraph 21, reading as follows:

Lastly, inasmuch as I am now a resident of Los Angeles County, California, I hereby nominate, constitute and appoint Dora Miller of San Gabriel, California, and Harold M. Davidson, of Alhambra,



California, as co-executors of my Last Will and Testament, and direct and authorize that they serve without bond, and it is my desire that the co-executors shall not sacrifice too much of the value of my estate unless in their opinion, it shall be absolutely necessary to do so in order to properly probate my Will.

Second: I hereby delete from my former Will, Paragraph 22 wherein I gave and bequeathed to Samuel Nelson and Arvid Ericson, whom I had named as executors of that Will, \$1,000.00 each for their work as executors. It is my intention and desire that the newly named and appointed co-executors, Dora Miller and Harold M. Davidson, shall only receive as remuneration for their services as my co-executors, such sum as the State of California provides shall be paid to the co-executors of my Last Will and Testament, and said sum paid for the services of co-executors shall be that [206] set forth in the California I. statutes.

Third: I wish to add one additional paragraph to my Will, being Paragraph 25, reading as follows:

If any person or persons other than those named in this document shall prove themselves to be my legal heir and entitled to take any portion of my estate, to such person or persons, individually, I give the sum of One Dollar (\$1.00) only.

Fourth: No other portion or paragraph of my Will is changed or altered in any manner whatsoever, except as herein set forth as to Paragraph Twenty-First and Paragraph Twenty-Second of my

Will of June 9, 1937, and the addition of Paragraph Twenty-Fifth.

In Witness Whereof, I have hereunto set my hand this 3rd day of August, 1945.

OLOF ZETTERLUND.

The above instrument was, at the day thereof, signed, sealed, published and declared, by the said Olof Zetterlund, as and for a Codicil to his Will, in the presence of us, who, at his request, and in his presence, and in the presence of each other, have subscribed our names as witnesses thereof.

PEARL LINDELAR,  
of Los Angeles.

CHARLES LINDELAR,  
of Los Angeles. [207]

Summary of the balance of my estate described herein and divided into twenty-seven (27) parts.

Sister Britta, one part.

Brother Johannes, one part.

Brother Carl, one part.

Brother Gustaf, one part.

Sister Karin, one part.

Nephew Albert, one part.

Nephew David, one part.

Niece Hulda, one part.

Niece Signe, one part.

Nephew Gustaf, one part.

Nephew Carl, one part.

Niece Ruth, one part.  
Niece Naimie, one part.  
Niece Hanna, one part.  
Niece Sara, one part.  
Nephew Gustaf, one part.  
Nephew Enfrid, one part.  
Nephew Samuel, one part.  
Nephew Paul, one part.  
Niece Hanna, one part.  
Niece Ester, one part.  
Niece Lydia, one part.  
Niece Constance, one part.  
Niece Hulda, one part.  
Niece Maria, one part.  
Nephew Paul, one part.  
Nephew John, one part.

[Endorsed]: Filed August 31, 1945, Superior Court, California. [208]

In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 246,797

In the Matter of the Estate of  
OLOF ZETTERLUND,

Deceased.

ORDER APPOINTING HAROLD M.  
DAVIDSON SPECIAL ADMINISTRATOR

Good cause appearing therefor, and on motion of  
Harold M. Davidson, one of the named co-execu-



tors in the codicil to the Last Will and Testament of Olof Zetterlund,

It is ordered by this Court, that Harold M. Davidson be, and he is hereby appointed Special Administrator of the estate of Olof Zetterlund, deceased. That as such Special Administrator he is authorized to proceed to Dade County, Florida, and that he shall have power to represent, to file objections to the naming of an executor other than himself in the state of Florida, to file a Petition for Probate of the estate of Olof Zetterlund in Dade County, Florida, or ancillary proceedings as he sees fit, to vote stock and carry on the business of Olof Zetterlund in the Elsinore Beach Corporation and Halland Land Company, both corporations of Florida; and as Special Administrator Harold M. Davidson is hereby authorized and empowered to take possession of all the real and personal property of the decedent and preserve it from damage, waste and injury, and to collect all claims, rents and other income [210] belonging to the estate, and to commence and maintain or defend suits and other legal proceedings as such Special Administrator; he is further authorized to sell perishable property and to exercise any and all other powers hereinbefore conferred upon him by this appointment; and Harold M. Davidson is authorized to spend from the funds of the estate of Olof Zetterlund such sum as is necessary to proceed to Florida and represent the estate in accordance with this order, and that his expenses shall not exceed the sum of \$700.00. Bond of said Special Administrator is hereby fixed at

\$2,000.00 corporate surety, or \$4,000.00 personal property.

Dated this 7th day of September, 1945.

NEWCOMB CONDEE,  
Judge.

Approved as to form:

/s/ C. BROWN.

[Endorsed]: Filed Superior Court, September 7, 1945. [211]

In the Superior Court of the State of California  
in and for the County of Los Angeles  
Case No. 246,797

In the Matter of the Estate of  
OLOF ZETTERLUND,

Deceased.

SPECIAL LETTERS OF ADMINISTRATION  
State of California,  
County of Los Angeles—ss.

Harold M. Davidson is hereby appointed special administrator of the Estate of Olof Zetterlund, deceased.

Witness, J. F. Moroney, Clerk of the Superior Court of the County of Los Angeles, with the seal of the court affixed, the 7th day of September, 1945.

By order of the Court.

[Seal] J. F. MORONEY,  
County Clerk,

By K. CLARK,  
Deputy.

State of California,  
County of Los Angeles—ss.

I do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of California, and that I will faithfully perform, according to law, the duties of Special Administrator of the Estate of Olof Zetterlund, deceased.

HAROLD M. DAVIDSON.

Subscribed and sworn to before me, this 7th day of September, 1945.

[Seal]                      M. BARR,  
Notary Public in and for County of Los Angeles,  
State of California.

[Endorsed]: Filed Superior Court September 7, 1945. [212]

In the Superior Court of the State of California  
in and for the County of Los Angeles  
No. 246,797

In the Matter of the Estate of  
OLOF ZETTERLUND,  
Deceased.

ORDER ADMITTING CODICIL TO PROBATE  
AND FOR LETTERS TESTAMENTARY

The petition of Dora Miller and Harold M. Davidson for the probate of the codicil of the will of said deceased and for Letters Testamentary thereon

coming regularly this day to be heard, and it being proved to the satisfaction of the Court that all notices of the said hearing have been given as required by law, and thereupon the Court proceeds to hear the evidence and grants said petition.

It is ordered and adjudged by the Court that the said Olof Zetterlund died on the 21st day of August, 1945, leaving estate in the State of California, and was then a resident of the County of Los Angeles, State of California; that the document herein filed purporting to be the codicil to Last Will and Testament of said deceased, be admitted to probate. That said Dora Miller and Harold M. Davidson be appointed co-executors, and Letters Testamentary thereon issued to them upon their taking the oath required by law, and they not be required to furnish bond.

Dated: Sept. 28, 1945.

NEWCOMB CONDEE,

Judge.

/s/ C. BROWN.

[Endorsed]: Filed Superior Court, September 28, 1945. [213]

In the Superior Court of the State of California  
in and for the County of Los Angeles

Case No. 246,797

In the Matter of the Estate of  
OLOF ZETTERLUND,

Deceased.

LETTERS TESTAMENTARY

State of California,  
County of Los Angeles—ss.

The Last Will of Olof Zetterlund, deceased, having been proved in the Superior Court of the County of Los Angeles, Dora Miller and Harold M. Davidson who are named therein as such, Co-Executors hereby appointed Co-Executors.

Witness, J. F. Moroney, Clerk of the Superior Court of the County of Los Angeles, with the seal of the Court affixed, the 28th day of September, 1945.

By order of the Court.

[Seal]                      J. F. MORONEY,  
County Clerk,

By /s/ C. Z. BAKER,  
Deputy.

State of California,  
County of Los Angeles—ss.

We do solemnly swear that we will support the Constitution of the United States, and the Consti-

tution of the State of California, and that we will faithfully perform, according to law, the duties of Co-Executors of the last Will and Testament of Olof Zetterlund, deceased.

/s/ DORA MILLER,

/s/ HAROLD M. DAVIDSON.

Subscribed and sworn to before me, this 28th day of September, 1945.

[Seal] /s/ V. A. MORGAN,  
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed, Superior Court, September 28, 1945. [214]

In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 246,797

In the Matter of the Estate of  
OLOF ZETTERLUND,

Deceased.

SUPPLEMENTAL ORDER ADMITTING WILL  
TO PROBATE AND SUPPLEMENTING  
ORDER HERETOFORE MADE ADMIT-  
TING CODICIL TO PROBATE

The supplemental petition of Harold M. Davidson and Dora Miller to admit will to probate and to supplement the order heretofore made admitting cod-



icil to probate, came on regularly to be heard on this 14th day of November, 1945, and it being proved to the satisfaction of the Court that all notices of said hearing have been given as required by law, and thereupon the Court proceeds to hear the evidence and grants said petition.

It is Ordered and Adjudged by the Court that the said Olof Zetterlund died on the 21st day of August, 1945, leaving estate in the State of California and was then a resident of the County of Los Angeles, State of California. That the document hereinbefore filed purporting to be the last will of said deceased, dated June 9, 1937 and a codicil to said will dated August 3, 1945, is declared to be the last will and testament of said deceased.

That the will dated June 9, 1937 is the will referred [215] to in the codicil. That the will of June 9, 1937, is the will, and each and every paragraph and allegation of said will are the allegations reaffirmed and realleged in Paragraph First in the codicil to last will dated August 3, 1945, and that Paragraphs Twenty-first and Twenty-second referred to in said codicil as being deleted from the former will, are Paragraphs Twenty-first and Twenty-second of the last will and testament of June 9, 1937. That the instrument reaffirmed and realleged in the codicil of August 3, 1945, is the same instrument as the last will and testament of June 9, 1937.

It Is Further Ordered and Adjudged that the record in this proceeding be supplemented to show

that the will now admitted to probate dated June 9, 1937, is the will referred to in the codicil and that the order heretofore made appointing the petitioners Harold M. Davidson and Dora Miller, co-executors of the codicil of the last will and testament of Olof Zetterlund, is hereby supplemented to read, co-executors of the last will and testament dated June 9, 1937 and the codicil thereto dated August 3, 1945.

Dated: November 15, 1945.

NEWCOMB CONDEE,  
Judge.

O.K. as to form only:

/s/ [INDISTINGUISHABLE]

[Endorsed]: Filed, Superior Court, November 15, 1945. [216]

Official Capacity  
Exemplified Copy

No. 246797

In the Matter of the Estate of  
OLOF ZETTERLUND,

Deceased.

State of California,  
County of Los Angeles—ss.

I, J. F. Moroney, County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, do hereby certify



and attest the foregoing to be a full, true and correct copy of the original Petition for Probate of Codicil to Will (with copies of Will and Codicil and Summary attached thereto), Order Appointing Harold M. Davidson Special Administrator, Letters of Administration, Order Admitting Codicil to Probate and for Letters Testamentary, Letters Testamentary and Supplemental Order Admitting Will to Probate and Supplementing Order Heretofore Made Admitting Codicil to Probate, on file or of record in my office, and that I have carefully compared the same with the original. I further certify that said Will and Codicil was duly executed and proved agreeably to the laws and usages of the State of California and also that said Letters have not been revoked and are in full force and effect on this date.

In Witness Whereof, I have hereunto set my hand and annexed the seal of the Superior Court of the State of California, in and for the County of Los Angeles, this 29th day of September, 1947.

/s/ J. F. MORONEY,

County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

State of California,  
County of Los Angeles—ss.

I, Caryl M. Sheldon, Presiding Judge of the Superior Court of the State of California, in and

for the County of Los Angeles, do hereby certify that J. F. Moroney is County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles (which Court is a court of record, having a seal); that the signature to the foregoing certificate and attestation is the genuine signature of the said J. F. Moroney as such officer; that the seal annexed thereto is the seal of said Superior Court; that said J. F. Moroney as such Clerk is the legal custodian of the original records or documents described and referred to in the foregoing certificate, is the proper officer to execute the said certificate and attestation, and such attestation is in due form according to the laws of the State of California.

In Witness Whereof, I have hereunto set my hand in my official character as such Presiding Judge, at the City of Los Angeles, County and State aforesaid, this 29th day of September, 1947.

/s/ CARYL M. SHELDON,  
Presiding Judge of the Superior Court of the State  
of California, in and for the County of Los  
Angeles.

State of California,  
County of Los Angeles—ss.

I, J. F. Moroney, County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California in and for the County of Los Angeles (which Court is a

court of record, having a seal which is annexed hereto), do hereby certify that Caryl M. Sheldon, whose name is subscribed to the foregoing certificate of due attestation was, at the time of signing the same, Presiding Judge of the Superior Court aforesaid and was duly commissioned, qualified and authorized by law to execute said certificate. And I do further certify that the signature of the Judge above named to the said certificate of due attestation is genuine.

In Witness Whereof, I have hereunto set my hand and annexed the seal of the Superior Court, at my office in said County, this 29th day of September, 1947.

/s/ J. F. MORONEY,

County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California; in and for the County of Los Angeles.

(U. S. Rev. St., Sec. 905—Attestation of Clerk, Certificate of Judge, and Certificate of Clerk to official character of Judge.)

Receipt of Copy acknowledged.

[Endorsed]: Filed October 1, 1947. [217]

[Title of District Court and Cause.]

ANSWER TO CROSS-COMPLAINT IN INTER-  
PLEADER AND AMENDMENT THERETO

Comes now Thomas H. Kuchel, as Controller of the State of California, and by way of answer to the cross-complaint for interpleader on file herein admits, denies and alleges as follows:

I.

Thomas H. Kuchel alleges that he is the duly appointed, qualified and acting Controller of the State of California, and as such is charged with responsibility of collecting all inheritance taxes due the State of California.

II.

Admits all of the allegations of the cross-complaint in interpleader.

III.

Alleges that the order and decree of the Superior Court of the State of California, in and for the County of Los Angeles, finding that said decedent was a resident of California, is res adjudicata in this proceeding.

IV.

Alleges that the purported order or judgment of the County Judge's Court in and for Dade County, Florida, finding that the decedent, Olof Zetterlund, was a resident of Dade County, Florida, is not entitled in this proceeding to full faith and credit

under the Constitution of the United States of America because of the arbitrary action of said court in refusing to consider and admit to probate the codicil to the Last Will and Testament of said Olof Zetterlund referred to in the cross-complaint in interpleader.

Wherefore, this defendant in interpleader prays:

That this court adjudge that said Olof Zetterlund was a resident and domiciled in the State of California at the time of his death; that the State of California is the only state entitled to charge and receive inheritance taxes by virtue of the death of the said Olof Zetterlund on all of his intangibles wherever situated and determine that the cross-complainants and complainants in interpleader are entitled to the relief sought by them in their cross-complaint and their cross-complaint in interpleader against the said Samuel Nelson, individually and as the pretending executor of the Estate of Olof Zetterlund, deceased.

JAMES W. HICKEY,

MORTON L. BARKER, and

WALTER H. MILLER,

By MORTON L. BARKER,

Attorneys for State  
Controller.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 10, 1949.



[Title of District Court and Cause.]

## OPINION

Olof Zetterlund was born in Sweden on December 17, 1858. He immigrated to the United States of America when he was twenty-one years of age and became a citizen of the State of Florida, where, through the years, he acquired considerable property.

During the year 1927 he employed the defendant, Dora Miller, as a housekeeper, which employment relationship [243] continued until the date of his death. Some years preceding his death he became ill, and he and Dora Miller left Florida, seeking a climate more compatible to his health. After residing in several communities they finally located in California. On August 21, 1945, at San Gabriel in Los Angeles County, California, Olof Zetterlund died.

On August 3, 1945, eighteen days prior to his death, Olof Zetterlund made and executed a Codicil to his Last Will and Testament (made and executed in Florida on June 9, 1937), which Codicil named Harold M. Davidson and Dora Miller, the defendants herein, as co-executors of his Will.

On August 30, 1945, a petition was filed by Ellen W. Burdet in the probate court (County Judge's Court) of the State of Florida for probate of the Will of Olof Zetterlund, deceased. Petitioner at that time did not disclose to the Court (if she knew) that a Codicil, changing executors, had been

made and executed by Olof Zetterlund in California.

On September 6, 1945, James Q. Burdet filed a petition to probate the Last Will and Testament of Olof Zetterlund, deceased, and consequent thereon (and on the same date) the judge of the probate court (County Judge's Court) of Florida made an order admitting to probate the Last Will and Testament of Olof Zetterlund, deceased, bearing date June 9, 1937.

On September 25, 1945, Samuel Nelson, Constance Nelson Ericson and Arvid Ericson filed their petition for appointment of Executors of said Will. In the meantime, on August 31, 1945, in Los Angeles County, California, the defendants herein, Dora Miller and Harold M. Davidson, filed with the Superior Court (the probate court) of the State of [244] California, in and for the County of Los Angeles, a petition to probate the Codicil to said Will and, after notice duly given, the Court on the 28th day of September, 1945, made its order admitting the Codicil to the Last Will and Testament of Olof Zetterlund, deceased, to probate and appointing Dora Miller and Harold M. Davidson as co-executors.

Thereafter, on November 15, 1945, the Court made a supplemental order which, in part, read as follows:

“\* \* \* the order heretofore made \* \* \* is hereby supplemented to read, co-executors of the last will and testament dated June 9, 1937, and the codicil thereto dated August 3, 1945.”

On October 2, 1945, Dora Miller and Harold M. Davidson, as co-executors of the Last Will and Testament of Olof Zetterlund, deceased, filed in the probate court of Florida (County Judge's Court) a petition for revocation of the probate of the will (admitted to probate on September 6, 1945), in which petitioners prayed that the order admitting the alleged Last Will and Testament of Olof Zetterlund, deceased, be revoked; that the Court declare the residence of decedent to be Los Angeles County, California; that the Court admit the exemplified Codicil to the Last Will and Testament of Olof Zetterlund, with Will Annexed, for probate and ancillary proceedings, and that petitioners be appointed ancillary executors of said Last Will and Testament and Codicil of the decedent.

On January 24, 1946, the State of California, by and through its Comptroller, filed a similar petition.

On December 31, 1946, the probate court of the State of Florida made an order denying the petitions of the [245] State of California and of Dora Miller and Harold M. Davidson, and on January 17, 1947, said court made and entered its order appointing Samuel Nelson as the sole executor of the Last Will and Testament of Olof Zetterlund, deceased; and Samuel Nelson thereafter duly qualified as such executor.

Dora Miller, Harold M. Davidson and the State of California instituted an appeal to the Circuit Court of Dade County, Florida, of the order of said probate court.

On February 19, 1947, Samuel Nelson, as execu-



tor, filed a petition with the probate court of Florida, demanding delivery by Dora Miller and Harold M. Davidson of certain assets then in their possession, as described in said petition. A hearing was had, and on February 26, 1947, the court made and entered its order requiring Dora Miller and Harold M. Davidson to deliver certain assets as described in the order, which was duly served upon the attorney of record (in the Florida proceedings) for defendants herein. The record before us does not show an appeal was ever taken from the order of delivery.

On May 28, 1947, the Circuit Court of the Eleventh Judicial Circuit of Florida made its order affirming the probate court in finding that deceased died domiciled in the State of Florida; and subsequently the decision of the probate court and of the circuit court was duly affirmed by the Supreme Court of the State of Florida on April 30, 1948.

When defendants herein failed to comply with the order of delivery of the Florida probate court (made on February 26, 1947), this action was commenced in the Federal court at Los Angeles, California, by Samuel Nelson, individually, and as an heir, devisee and legatee of Olof Zetterlund, deceased, in his own behalf and on behalf of all other heirs, [246] devisees and legatees similarly situated, and as sole domiciliary executor of the Estate of Olof Zetterlund, deceased, and as Trustee of an express trust.

Plaintiff's complaint asks that the judgment of February 26, 1947 (of the Florida probate court,

requiring Dora Miller and Harold M. Davidson to deliver assets), be given full faith and credit and that said judgment be made a judgment of this court; that the defendants in said judgment be required to perform and satisfy each of the provisions of the judgment and that they be adjudged in contempt of court for their refusal and failure to comply with the terms and provisions of the judgment; that a resulting trust be declared of the property belonging to Olof Zetterlund, deceased, in the hands of the defendants; that an accounting be had and defendants be enjoined from exercising any functions as co-executors of the Last Will and Testament of Olof Zetterlund, deceased; and, further, that the proceedings initiated and prosecuted by the defendants in the probate court of Los Angeles County, California, be determined to be null and void for want of jurisdiction, and that the defendants be compelled to recognize and give effect to the judgment of the County Judge's Court (probate court) of the State of Florida.

Defendants filed their answer and a counter-claim herein, by which counter-claim they ask that this court decree Olof Zetterlund, at the time of his death, was a resident of and domiciled in the State of California; that the Superior Court of the State of California, in and for the County of Los Angeles, has full, complete and exclusive jurisdiction of the Estate of said deceased and that the cross-complainants are the true and lawful co-executors of [247] the Last Will and Testament and the Codicil of Olof Zetterlund, deceased.

Plaintiff contends that defendants Harold M. Davidson and Dora Miller, having filed a petition in the Florida probate court, having submitted themselves to the jurisdiction of the Florida court and having exercised their rights to appeal, which appeal was affirmed by the highest court of the State of Florida, are bound by the judgment of the proceedings they initiated, and that the judgments of the courts of the State of Florida are entitled to full faith and credit under the provisions of Section I, Article IV, of the Constitution of the United States of America.

Defendants allege that at the time of his death Olof Zetterlund was a resident of the County of Los Angeles, State of California; that they presented to the probate court in Los Angeles County, California, the Codicil to decedent's Last Will and Testament and said Last Will and Testament, and subsequently were appointed (by the Superior Court of Los Angeles County, California) co-executors of the Last Will and Testament of Olof Zetterlund, deceased, and the Codicil thereto.

The Federal Court is thus called upon to adjudicate the rights and responsibilities of two sets of executors—one appointed by the probate court of Florida and one appointed by the probate court of California.

The question of the right of a Federal Court to interfere with probate proceedings is by no means a new one. In 1892 the Supreme Court, in the case of *Byers v. McAuley*, 149 U.S. 608, laid down the following rules: [248]

1. “ \* \* \* it is a rule of general application, that where property is in the actual possession of one court of competent jurisdiction, such possession cannot be disturbed by process out of another court.

2. “An administrator appointed by a state court is an officer of that court; his possession of the decedent’s property is a possession taken in obedience to the orders of that court; it is the possession of the court, and it is a possession which cannot be disturbed by any other court.”

In *Watkins v. Eaton*, 183 F. 384, the court of the Second Circuit said, at page 387:

“We entirely concur with the conclusion of Judge Ray that the personal estate of the deceased situated in this state is now in the possession of the Surrogate’s Court of Madison County, and that the possession of such property by such court cannot be disturbed by any process issued out of the federal court, and that a decree cannot be pronounced and enforced by the federal court that the executor deliver the property in his hands as an officer of the Surrogate’s Court to the administrator with the will annexed appointed by the Michigan court \* \* \*. It is surely unnecessary to cite authorities to show that the federal court has no jurisdiction to administer this extraordinary relief. It is sufficient to point out that in *Byers v. McAuley*, 149 U.S. 608, \* \* \* the

Supreme Court states, as 'a proposition fully settled by the decisions of (that) court [249] that:

“ ‘An administrator appointed by the state court is an officer of that court; his possession of the decedent's property is a possession taken in obedience to the orders of that court; it is in the possession of the court, and it is a possession which cannot be disturbed by any court.’ ”

In a more recent case arising in this Circuit, *Markham v. Allen*, 326 U.S. 490, at 494, the Supreme Court reiterated the proposition that a Federal court

“\* \* \* may not exercise its jurisdiction to disturb or affect the possession of property in the custody of a state court.”

In *United States vs. Swanson*, 75 F. Supp. 118, at 123, the learned Judge said:

“We recognize that where property is in the actual possession of a court of competent jurisdiction, such possession may not be disturbed by process out of another court; further, that an administrator appointed by a state court is an officer of that court, and that his possession of the decedent's property is a possession taken in obedience to orders of that court, is a possession of the court and a possession which may not be disturbed by any other court.”



In the case at bar the property that plaintiffs wish turned over to them is property taken into possession by defendants as Executors, or as officers of the probate court; and as such property is in the possession of the probate court, it is impossible for this court to make an order disturbing its possession. [250]

It is evident from the facts adduced in this case that defendants herein were, by order of the California Probate Court, duly appointed co-executors of the Last Will and Testament of the deceased. There has been no evidence to show that the proceedings in the probate court in California were not regular. It also appears that the plaintiff herein was duly appointed Executor of the Will of decedent in Florida; that there is nothing in the record to indicate that his appointment was not regular and in conformity with Florida probate laws. It is true that defendants herein disagree with the conclusions reached by the Florida courts, but there is no indication in the record that the proceedings were anything but regular in all particulars.

Under order of the probate court of Florida plaintiff took possession of certain property belonging to deceased. Under order of the probate court of California defendants took possession of certain property belonging to deceased in California. Each possession is lawful under the orders of the respective probate courts. As we read the decisions, this Court does not have jurisdiction to disturb the possession of property in the probate

court, regardless of whether it is the probate court in Florida or the probate court in California.

We are not attempting in any way to disturb the decisions of the Florida courts, but we are not of the opinion that we have the right to order defendants, as co-executors appointed by the California court, to turn over to plaintiff certain property belonging to the deceased; nor do we feel that we have the right to tell the defendants, who are officers of the probate court in California, that they must obey the orders of a probate court in a foreign jurisdiction. [251]

It is our opinion that this Court does not have the right to interfere in any manner with the regular probate proceedings of the California or the Florida probate courts.

Judgment will be in favor of defendants on plaintiff's complaint and in favor of cross-defendants on the cross-complaint.

Dated this 11th day of June, 1951.

/s/ HARRY C. WESTOVER,  
District Judge.

[Endorsed]: Filed June 11, 1951. [252]



In the District Court of the United States in and  
for the Southern District of California, Central  
Division

Civil No. 7545—HW

SAMUEL NELSON, Individually, and as an Heir,  
Devisee and Legatee of Olof Zetterlund, De-  
ceased, Suing on His Own Behalf and on  
Behalf of All Other Heirs, Devisees and Lega-  
tees of Olof Zetterlund, Deceased, Similarly  
Situated, etc.,

Plaintiff and Cross-Defendant,

vs.

DORA MILLER and HAROLD M. DAVIDSON,  
Both Individually and as Pretending Co-  
Executors, or Co-Executors De Son Tort, of  
the Estate of Olof Zetterlund, Deceased,

Defendants and Cross-Complainants.

DORA MILLER and HAROLD M. DAVIDSON,  
Co-Executors of the Estate of Olof Zetterlund,  
Deceased,

Cross-Complainants and Complainants  
in Interpleader,

vs.

STATE OF CALIFORNIA, and THOMAS E.  
KUCHEL, as Controller of the State of Cali-  
fornia,

Defendants in Interpleader.

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

The above-entitled matter came on regularly to be heard April 5th, 1951, before the above-entitled Court, Honorable Harry C. Westover, District Judge, presiding, the plaintiff and cross-defendant, Samuel Nelson, individually and as an heir, devisee and legatee of Olof Zetterlund, deceased, appearing by his attorney, Edward O'Connor, of the firm of O'Connor & O'Connor, and defendants and cross-complainants, Dora Miller and Harold M. Davidson, both individually and as co-executors of the estate of Olof Zetterlund, deceased, appearing in person and through counsel, William J. Clark, and the State of California and Thomas H. Kuchel as Controller of the State of California, appearing through its attorney, Morton L. Barker, and the cause having been submitted to the Court for decision, based upon certain facts admitted by the parties in the matter, and with the request that the Court determine whether or not it could render a judgment based upon the admitted facts, before taking any evidence beyond the question as to whether or not the Federal Court could adjudicate the rights or responsibilities of the two sets of Executors, one appointed in the Probate Court of the State of Florida and one appointed by the Probate Court of the State of California, and the matter having been submitted to the Court for its decision, the Court now finds as follows:

## Findings of Fact

Olof Zetterlund was born in Sweden on December 17, 1858. He immigrated to the United States of America when he was twenty-one years of age and became a citizen of the State of Florida, where, through the years, he acquired considerable property.

During the year 1927 he employed the defendant, Dora Miller, as a housekeeper, which employment relationship continued until the date of his death. Some years preceding his death he became ill, and he and Dora Miller left Florida, seeking a climate more [254] compatible to his health. After residing in several communities they finally located in California. On August 21, 1945, at San Gabriel in Los Angeles County, California, Olof Zetterlund died.

On August 3, 1945, eighteen days prior to his death, Olof Zetterlund made and executed a Codicil to his Last Will and Testament (made and executed in Florida on June 9, 1937), which Codicil named Harold M. Davidson and Dora Miller, the defendants herein, as co-executors of his Will.

On August 30, 1945, a petition was filed by Ellen W. Burdet in the probate court (County Judge's Court) of the State of Florida for probate of the Will of Olof Zetterlund, deceased. Petitioner at that time did not disclose to the Court (if she knew) that a Codicil, changing executors, had been made and executed by Olof Zetterlund in California.

On September 6, 1945, James Q. Burdet filed a petition to probate the Last Will and Testament of

Olof Zetterlund, deceased, and consequent thereon (and on the same date) the judge of the Probate Court (County Judge's Court) of Florida made an order admitting to probate the Last Will and Testament of Olof Zetterlund, deceased, bearing date June 9, 1937.

On September 25, 1945, Samuel Nelson, Constance Nelson Ericson and Arvid Ericson filed their petition for appointment of Executors of said Will. In the meantime, on August 31, 1945, in Los Angeles County, California, the defendants herein, Dora Miller and Harold M. Davidson, filed with the Superior Court (the Probate Court) of the State of California, in and for the County of Los Angeles, a petition to probate the Codicil to said Will and, after notice duly given, the Court on the 28th day of September, 1945, made its order admitting the Codicil to the Last Will and Testament of Olof Zetterlund, deceased, to probate and appointing Dora Miller and Harold M. Davidson as [255] co-executors.

Thereafter, on November 15, 1945, the Court made a supplemental order which, in part, read as follows:

“\* \* \* the order heretofore made \* \* \* is hereby supplemented to read, co-executors of the last will and testament dated June 9, 1937, and the codicil thereto dated August 3, 1945.”

On October 2, 1945, Dora Miller and Harold M. Davidson as co-executors of the Last Will and Testament of Olof Zetterlund, deceased, filed in the

probate court of Florida (County Judge's Court) a petition for revocation of the probate of the Will (admitted to probate on September 6, 1945) in which petitioners prayed that the order admitting the alleged Last Will and Testament of Olof Zetterlund, deceased, be revoked; that the Court declare the residence of decedent to be Los Angeles County, California; that the Court admit the exemplified Codicil to the Last Will and Testament of Olof Zetterlund, with Will Annexed, for probate and ancillary proceedings, and that petitioners be appointed ancillary executors of said Last Will and Testament and Codicil of the decedent.

On January 24, 1946, the State of California, by and through its Comptroller, filed a similar petition.

On December 31, 1946, the probate court of the State of Florida made an order denying the petitions of the State of California and of Dora Miller and Harold M. Davidson, and on January 17, 1947, said court made and entered its order appointing Samuel Nelson as the sole executor of the Last Will and Testament of Olof Zetterlund, deceased; and Samuel Nelson thereafter duly qualified as such executor.

Dora Miller, Harold M. Davidson and the State of California instituted an appeal to the Circuit Court of Dade County, Florida, of the order of said Probate Court.

On February 19, 1947, Samuel Nelson, as Executor, filed a [256] petition with the probate court of Florida, demanding delivery by Dora Miller and Harold M. Davidson of certain assets then in their



possession, as described in said petition. A hearing was had, and on February 26, 1947, the court made and entered its order requiring Dora Miller and Harold M. Davidson to deliver certain assets as described in the order, which was duly served upon the attorney of record (in the Florida proceedings) for defendants herein. The record before us does not show an appeal was ever taken from the order of delivery.

On May 28, 1947, the Circuit Court of the Eleventh Judicial Circuit of Florida made its order affirming the probate court in finding that deceased died domiciled in the State of Florida; and subsequently the decision of the probate court and of the circuit court was duly affirmed by the Supreme Court of the State of Florida on April 30, 1948.

When defendants herein failed to comply with the order of delivery of the Florida probate court (made on February 26, 1947), this action was commenced in the Federal court at Los Angeles, California, by Samuel Nelson, individually, and as an heir, devisee and legatee of Olof Zetterlund, deceased, in his own behalf and on behalf of all other heirs, devisees and legatees similarly situated, and as sole domiciliary executor of the Estate of Olof Zetterlund, deceased, and as Trustee of an express trust.

Plaintiff's complaint asks that the judgment of February 26, 1947 (of the Florida probate court, requiring Dora Miller and Harold M. Davidson to deliver assets), be given full faith and credit and that said judgment be made a judgment of this



Court; that the defendants in said judgment be required to perform and satisfy each of the provisions of the judgment and that they be adjudged in contempt of court for their refusal and failure to comply with the terms and provisions of the judgment; that a resulting trust be declared of the property belonging to [257] Olof Zetterlund, deceased, in the hands of the defendants; that an account be had and defendants be enjoined from exercising any functions as co-executors of the Last Will and Testament of Olof Zetterlund, deceased; and, further, that the proceedings initiated and prosecuted by the defendants in the probate court of Los Angeles County, California, be determined to be null and void for want of jurisdiction, and that the defendants be compelled to recognize and give effect to the judgment of the County Judge's Court (probate court) of the State of Florida.

Defendants filed their answer and a counter-claim herein, by which counter-claim they ask that this court decree Olof Zetterlund, at the time of his death, was a resident of and domiciled in the State of California; that the Superior Court of the State of California, in and for the County of Los Angeles, has full, complete and exclusive jurisdiction of the Estate of said deceased and that the cross-complainants are the true and lawful co-executors of the Last Will and Testament and the Codicil of Olof Zetterlund, deceased.

Plaintiff contends that defendants Harold W. Davidson and Dora Miller, having filed a petition in the Florida Probate Court, having submitted

themselves to the jurisdiction of the Florida Court and having exercised their rights to appeal, which appeal was affirmed by the highest court of the State of Florida, are bound by the judgment of the proceedings they initiated, and that the judgments of the courts of the State of Florida are entitled to full faith and credit under the provisions of Section I, Article IV, of the Constitution of the United States of America.

Defendants allege that at the time of his death, Olof Zetterlund was a resident of the County of Los Angeles, State of California; that they presented to the probate court in Los Angeles County, California, the Codicil to decedent's Last Will and Testament and said Last Will and Testament, and subsequently were [258] appointed (by the Superior Court of Los Angeles County, California) co-executors of the Last Will and Testament of Olof Zetterlund, deceased, and the Codicil thereto.

### Conclusions of Law

And as Conclusions of Law, from the foregoing facts, the Court concludes that the proceedings in the probate court in California were legal, and in conformity with the California Probate laws, and that the proceedings in the probate court in Florida were legal, and in conformity with the Florida probate laws.

That under the order of the probate court of Florida, the Executor took possession of all property belonging to the deceased in the State of Florida, and under order of the Probate Court of

California, defendants and cross-complainants took possession of certain property belonging to the deceased in California. That each possession is lawful under the orders of the respective probate courts. That this court does not have jurisdiction to disturb the possession of property regardless of whether it is the probate court of Florida, or the probate court of California, and that it does not have the right to order the defendants, as co-executors appointed by the California Court, to turn over to plaintiff certain property belonging to the deceased, or allegedly belonging to the deceased, nor does this Court have jurisdiction to order the defendants to obey the orders of the probate court in a foreign jurisdiction.

That this court does not have the right to interfere in any manner with the legal probate proceedings of the State of California, or the State of Florida. That since there are executors in the State of California, that said executors have full right under the supervision of the probate court of [259] California, to marshal all of the assets of the deceased, and to submit their accounting to the probate court in California, and to no other party.

Let judgment be entered accordingly.

Dated July 2, 1951.

/s/ HARRY C. WESTOVER,  
Judge.

Affidavit of Service by Mail attached.

Lodged June 25, 1951.

[Endorsed]: Filed July 3, 1951. [260]

United States Court of Appeals  
for the Ninth Circuit

No. 13110

SAMUEL NELSON, Individually, and as an Heir,  
Devisee and Legatee of Olof Zetterlund, De-  
ceased, Suing on His Own Behalf and on  
Behalf of All Other Heirs, Devisees and Lega-  
tees of Olof Zetterlund, Deceased, Similarly  
Situated, etc.,

Appellant,

vs.

DORA MILLER and HAROLD M. DAVIDSON,  
Both Individually and as Pretending Co-  
Executors, or Co-Executors De Son Tort, of the  
Estate of Olof Zetterlund, Deceased,

Appellees.

MOTION FOR LEAVE TO DESIGNATE ADDI-  
TIONAL PORTIONS OF THE RECORD

Comes Now the Appellee, Dora Miller, in the  
above-entitled case, and asks leave to augment the  
Transcript of Record heretofore prepared to in-  
clude the following additional parts of the record:  
(1) Opinion of the District Court; (2) Findings of  
Fact and Conclusions of Law of the District Court;  
(3) Cross-Complaint for Interpleader and Declara-  
tory Relief; and (4) Answer to Cross-Complaint in  
Interpleader and Amendment Thereto.

The said motion is made on the grounds that  
Appellee feels the additional designations are neces-

sary for the consideration of said case and to correct pertinent omissions of such record and to more fully show what actually occurred in the proceedings of the case before the United States District Court for the Southern District of California, Central Division, and for the reasons as more particularly set forth in the Affidavit of W. Alan Thody, attached hereto and made a part hereof, and in accordance with the Stipulation entered into by and among the parties hereto, which Stipulation is also attached hereto and made a part hereof.

ROLAND RICH WOOLLEY, and

W. ALAN THODY,

By /s/ W. ALAN THODY,

Attorneys for Appellee,

Dora Miller.

[Title of Court of Appeals and Cause.]

#### AFFIDAVIT OF W. ALAN THODY

State of California,

County of Los Angeles—ss.

W. Alan Thody, being first duly sworn, deposes and says:

That he is an attorney at law and duly licensed to practice in the State of California, and that he is of counsel in the above-entitled action, representing Appellee, Dora Miller; that he was not an attorney of record at the trial of the above-entitled action in the United States District Court for the



Southern District of California, Central Division, and that for such reasons he was not intimately acquainted with the record before that Court.

Affiant further states that in the preparation of the brief of Appellee, Dora Miller, it is noted and it fairly appears that the Transcript of the Record heretofore designated is incomplete, and that the following further designations should be made: (1) Opinion of the District Court; (2) Findings of Fact and Conclusions of Law of the District Court; (3) Cross-Complaint for Interpleader and Declaratory Relief; and (4) Answer to Cross-Complaint in Interpleader and Amendment Thereto, in order that such Record will fully and more accurately show what transpired during the proceedings of such lower court, and Affiant prays leave that the Motion of Appellee, Dora Miller, for Augmentation of the Record be granted.

/s/ W. ALAN THODY.

Subscribed and sworn to before me on February 4, 1952.

[Seal]      /s/ FRANCES A. DIXON,  
Notary Public in and for  
Said County and State.

My commission expires Oct. 31, 1954.



[Title of Court of Appeals and Cause.]

STIPULATION PERMITTING AUGMENTA-  
TION OF THE TRANSCRIPT OF THE  
RECORD

It Is Hereby Stipulated and Agreed by and among the parties in the above-entitled action, by and through their respective attorneys, that the Transcript of Record heretofore filed by the Appellant with the United States Circuit Court of Appeals for the Ninth Circuit may be supplemented to include the following portions of the record: (1) Opinion of the District Court; (2) Findings of Fact and Conclusions of Law of the District Court; (3) Cross-Complaint for Interpleader and Declaratory Relief; and (4) Answer to Cross-Complaint in Interpleader and Amendment Thereto.

It Is Further Agreed that any and all notices, appearances and arguments as required by Rule Seventeen of the United States Circuit Court of Appeals for the Ninth Circuit, are hereby expressly waived.

ROLAND RICH WOOLLEY, and

W. ALAN THODY,

By /s/ W. ALAN THODY,

Attorneys for Appellee,  
Dora Miller.

O'CONNOR & O'CONNOR,  
By /s/ EDWARD J. O'CONNOR,  
Attorneys for Appellant,  
Samuel Nelson.

WILLIAM J. CLARK, ESQ.,  
/s/ WILLIAM J. CLARK,  
Attorney for Appellee,  
Harold M. Davidson.

/s/ WALTER H. MILLER,  
Senior Inheritance Tax Atty.

/s/ WALTER H. MILLER,  
Attorney for State Controller,  
State of California.

So Ordered:

/s/ WILLIAM DENMAN,  
Chief Judge;

/s/ WILLIAM HEALY,

/s/ WALTER L. POPE,  
United States Circuit Judges.

[Endorsed]: Filed February 7, 1952.

[Endorsed]: No. 13110. United States Court of Appeals for the Ninth Circuit. Samuel Nelson, Individually, and as an Heir, Devisee and Legatee of Olof Zetterlund, Deceased, Suing on His Own Behalf and on Behalf of All Other Heirs, Devisees and Legatees of Olof Zetterlund, Deceased, Similarly Situated, Appellant, vs. Dora Miller and Harold M. Davidson, Both Individually and as Pretending Co-Executors, or Co-Executors De Son Tort, of the Estate of Olof Zetterlund, Appellees. Supplemental Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed September 24, 1951.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.